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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120924487-3221-02]

RIN 0648-XC263

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the annual catch limit (ACL), harvest guideline (HG), annual catch target (ACT) and associated annual reference points for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2012, through June 30, 2013. These specifications were determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2012-2013 ACL or maximum HG for Pacific mackerel is 40,514 metric tons (mt). The proposed ACT, which will be the directed fishing harvest target, is 30,386 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the ACL and ACT (10,128 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. This rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Effective [insert date of publication in the FEDERAL REGISTER] through June 30, 2013.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species (CPS) Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), where the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL) and available biological catch (ABC), annual catch limit (ACL) and harvest guideline (HG) and/or annual catch target (ACT) recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

NMFS is implementing through this rule the 2012-2013 ACL, HG, ACT and other annual catch reference points, including the OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass, for Pacific mackerel in the U.S. EEZ off the Pacific coast. (The EEZ off the Pacific Coast encompasses ocean waters seaward of the outer boundary of state waters, which is 3 nautical miles off the coast, out to a line 200 nautical miles from the coast.) The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. This level is reduced from the Maximum Sustainable Yield/OFL level for economic and ecological considerations. The HG is based, in large part, on the current estimate of stock biomass. The harvest control rule in the

CPS FMP is $HG = [(Biomass - Cutoff) * Fraction * Distribution]$ with the parameters described as follows:

1. Biomass. The estimated stock biomass of Pacific mackerel for the 2012-2013 management season is 211,126 mt.
2. Cutoff. This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.
3. Fraction. The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested.
4. Distribution. The average portion (currently 70%) of the total Pacific mackerel biomass that is estimated to be in the U.S. EEZ off the Pacific coast, based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

At the June 2012 Council meeting, the Council recommended management measures for the Pacific mackerel fishery. These management measures were based on the 2011 full stock assessment, which estimated the biomass of Pacific mackerel to be 211,126 mt. The 2011 full stock assessment of Pacific mackerel was reviewed by a Stock Assessment Review Panel in May 2011, and was approved in June 2011 by the SSC as the best available science for use in management. Based on recommendations from the Council's SSC and other advisory bodies, the Council recommended and NOAA Fisheries (NMFS) is implementing, an OFL of 44,336 mt, an ABC of 42,375 mt, an ACL and maximum harvest guideline (HG) of 40,514 mt, and an ACT of 30,386 mt for the 2012-2013 Pacific mackerel fishing year. These catch specifications are based on the biomass estimate for Pacific mackerel and the control rules established in the CPS FMP.

If the ACT is attained, the directed fishery will close, and the difference between the ACL and ACT (10,128 mt) will be reserved as a set aside for incidental landings in other CPS fisheries and other sources of mortality. In that event, incidental harvest measures will be in place for the remainder of the fishing year, including a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS. In other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel, except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS. Upon the fishery attaining the ACL/HG (40,514 mt), no vessels in CPS fisheries may retain Pacific mackerel. The purpose of the incidental set-aside and allowance of an incidental fishery is to allow for the restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries.

The NMFS Southwest Regional Administrator will publish a notice in the Federal Register announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

On December 7, 2013, NMFS published a proposed rule for this action and solicited public comments (77 FR 73005). After considering public comments, NMFS is publishing this final rule, which includes the content of the proposed rule without change. NMFS received multiple comments from one commenter.

Comments and Responses

Comment 1: The commenter stated that the proposed catch levels fail to account for ecological factors. Specifically, among the factors listed in the CPS FMP that are considered when setting annual specifications, that “Information on ecological factors such as the status of the ecosystem, predator-prey interactions, or oceanographic conditions that may warrant additional ecosystem-based management considerations” was not considered.

Response: To the extent this comment is directed to the setting of the 2012/2013 Pacific mackerel ACL, HG, and other associated annual reference points, these harvest levels are based on the HG and ABC control rules established in the FMP and are based on the best available science. Furthermore, ecological factors such as the life-cycles, distributions, and population dynamics of the various CPS stocks, as well as their role as forage were considered and evaluated in developing these control rules. Beyond the ecological factors used in the development of the control rules, other ecological information related to the annual management of CPS is presented to the Council through the annual CPS Stock Assessment and Fishery Evaluation which contains a chapter titled Ecosystem Considerations. In this chapter information on current climate and oceanographic conditions such as El Niño and the Pacific Decadal Oscillation are presented, as well as ecosystem trends and indicators relevant to CPS such as sea surface temperature, ocean productivity and copepod abundance are summarized. Additionally, NMFS also considered ecological information in its review of the 2012/13 Pacific mackerel specifications through both the Environmental Assessment (EA) and the Essential Fish Habitat consultation. The EA analyzed the effects of the proposed action on the environment, which included an examination of available ecosystem and predator/prey modeling efforts. NMFS is unaware of any ecological factors that warranted additional ecosystem-based considerations in the 2012/2013 Pacific mackerel specifications and none were presented by the

commenter. In addition to the considerations mentioned above, OY considerations are built into the HG control rule which for the 2012/2013 fishing season resulted in an HG 4,000 mt and 2,000 mt below the OFL and ABC respectively. Moreover, for the Council recommended and NMFS implemented an ACT that is 10,000 mt below the ACL/HG level, not for management uncertainty, but to prevent discard of Pacific mackerel in other CPS fisheries if the mackerel fishery is closed.

Comment 2: The commenter stated that management of Pacific mackerel fails to include a reasonable overfished threshold.

Response: This comment is directed at the overfished criteria for Pacific mackerel established in Amendment 8 to the CPS FMP. This rulemaking is not intended to revise or re-examine this criterion, and so the comment is beyond the scope of this rulemaking.

Although reconsideration of the existing overfished criteria is beyond the scope of this rulemaking, NMFS notes that the commenter does not provide any explicit information as to why the current criteria for determining whether Pacific mackerel is overfished is not supported by the best available science. NMFS also points out that protection against the Pacific mackerel stock from reaching an overfished state through overfishing is an explicit part of the HG control rule through the use of the CUTOFF parameter. If the CUTOFF value is greater than zero (currently set at the 18,200 mt), then the allowable rate of harvest under the HG rule is automatically reduced as biomass declines. By the time biomass falls as low as CUTOFF, the harvest rate is reduced to zero. The combination of this CUTOFF and reduced harvest rates at low biomass levels means that a rebuilding program for Pacific mackerel is defined implicitly in the control and occurs even when the stock is not overfished.

Comment 3: The same commenter also requested that alternative control rules for Pacific mackerel be considered that include a maximum catch threshold or MAXCAT as described in the CPS FMP and currently in place for Pacific sardine.

Response: This comment is directed at part of the management framework beyond the scope of implementing the annual specifications for Pacific mackerel under the CPS FMP. This rulemaking is not intended to revise or re-examine that framework, and so the comment is beyond the scope of this rulemaking.

Although consideration of additional harvest control mechanisms was not part of this rulemaking, NMFS will briefly address the subject of MAXCAT for Pacific mackerel. Although MAXCAT provisions can be useful control mechanisms, they have not been determined to be necessary or useful for managing Pacific mackerel under the CPS FMP. This is in part due to the assumption that the U.S. fishery appears to be limited by markets and resource availability to about 40,000 mt per year; landings have rarely exceeded 20,000 mt over the last 20 years and have averaged approximately 6,000 mt over the last 10 years and only 2,000 mt over the last three. If landings were to increase substantially, the need for a MAXCAT would likely be revisited. However, although there is not a MAXCAT for Pacific mackerel, during the years 2007-2010, the Council recommended, and NMFS implemented, HGs much lower (10,000 to 40,000 mt lower) than those calculated from the HG control rule as a precautionary measure based on uncertainties surrounding the model estimating biomass.

Comment 4: The same commenter also noted that NMFS completed the Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) after the Council made its recommendation to NMFS on the proposed action and stated that the EA that was ultimately completed by NMFS did not include adequate consideration of a range of alternatives or the

environmental impacts, including cumulative impacts of the action and subsequently requested that an Environment Impact Statement (EIS) be prepared.

Response: NOAA prepared an EIS to analyze the management framework in the FMP for Pacific mackerel at the time the FMP was adopted; the adjustments to the management regime in Amendment 13 did not substantively change the harvest levels, and was analyzed in an EA. The EA for the 2012-2013 annual specifications demonstrates that the implementation of these annual catch levels for the Pacific mackerel fishery based on the HG and ABC control rules in the FMP will not significantly adversely impact the quality of the human environment. Therefore an EIS is not necessary to comply with NEPA for this action.

With regard to the scope and range of alternatives, the six alternatives analyzed in the EA was a reasonable number and covered an appropriate scope based on the limited nature of this action, which is the application of set formulae in the FMP for the HG and ABC control rules to determine harvest levels of Pacific mackerel for one year. The six alternatives analyzed (including the proposed action and no action) were objectively evaluated in recognition of the purpose and need of this action and the framework process in place based on the specified control rules for setting catch levels for Pacific mackerel. The CPS FMP describes a specific framework process for annually setting required catch levels and reference points. Within this framework are specific control rules used for determining the annual OFL, ABC, ACL and HG/ACT. Although there is some flexibility built into this process in terms of determinations of scientific and management uncertainty, there is little discretion in the control rules for the OFL (level for determining overfishing) and the HG (level at which directed fishing is stopped), with the annual biomass estimate being the primary determinant in both these levels. Therefore, the alternatives in the EA covered a range of higher and lower ABC and ACL levels in the context of

the OFL and HG levels and the environmental impacts of those alternatives. Additionally, although the commenter states that cumulative impacts were not analyzed, Chapter 6 of the EA does include an examination of cumulative impacts.

Classification

The Administrator, Southwest Region, NMFS, determined that this action is necessary for the conservation and management of the Pacific mackerel fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule is exempt from Office of Management and Budget review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here.

No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Authority: 16 U.S.C. 1801 et seq.

Dated: March 20, 2013

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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